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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 6, 2020

To Concerned Citizens, Public Interest Advocates, and Members of the Regulated Community:

The COVID-19 pandemic has already taken the lives of more than 120 Texans. It will take many more. The toll is far worse in several of our sister states. Doctors and nurses there are overwhelmed with COVID-19 patients, while the materials they need to save lives and protect their own lives are in critically short supply. That grim reality is a foreseeable future for Texas. But it is avoidable—if we slow the spread of this deadly virus. Our first and most urgent imperative as citizens is to interrupt transmission of COVID-19.

Yet that imperative has not interrupted TCEQ's efforts to fulfill its mission to protect public health and the environment. Because our agency's operations were not designed for a pandemic, we have adapted how we deliver important government services to all Texans. Many of those efforts are reflected on TCEQ's COVID-19 [website](#). Some have been the subject of media reports, including the agency's intention to exercise case-by-case enforcement discretion.

There has been particular interest in the enforcement discretion policy as well as the administrative relief detailed at TCEQ's COVID-19 website, under the heading of [TCEQ Reporting Requirements for Regulated Entities](#). That interest has been expressed both in the form of media requests and by citizens asking the Commission to rescind these policies. This letter is, in part, a response to those requests. Let me address what TCEQ has done, not done, and why.

TCEQ has not relaxed any limits on air emissions or discharges to water. TCEQ has not relaxed the requirement to report emissions or discharges that exceed these limits. TCEQ has not relaxed any requirement to ensure safe drinking water or the safe management of waste. TCEQ continues to monitor air quality and drinking water supplies. Our investigators are still in the field responding to complaints and helping ensure compliance. Our Watermasters remain in the field as well. Our enforcement office continues to develop cases both for administrative enforcement and for referral to the Office of the Attorney General. TCEQ staff stand ready to respond to any emergency within our jurisdiction, whether that be a disruption to a public drinking water supply, a chemical release, or an industrial fire. In numerous other ways, TCEQ has maintained the continuity of the services it provides to all Texans. In short, TCEQ is fully engaged in its mission to protect public health and the environment.

We continue in that mission acutely aware that we must slow the spread of the virus. Accordingly, the agency—like many workplaces—has shifted largely to working remotely. Access to our agency’s offices is restricted. Staff now work from their kitchen tables, and meetings are conducted by telephone. The investigators I mentioned now travel one per vehicle, responding to citizen complaints and other agency priorities. We have adjusted our work practices to continue our mission while employing measures to slow the spread of this virus.

The industries that TCEQ regulates have also made adjustments. In some cases, social distancing and other measures that are required to slow the transmission of the virus have also slowed or prevented certain compliance activities, such as routine reporting and compliance audits.

TCEQ’s Executive Director has determined that it may be inappropriate to pursue enforcement for violations that were unavoidable due to the pandemic or where compliance would create an unreasonable risk of transmitting COVID-19 or otherwise impede an appropriate response to the pandemic. Accordingly, TCEQ will consider exercising its discretion to not bring enforcement actions for such violations on a case-by-case basis. This is not a suspension of rules, such as the limited rule suspensions that have been necessary in response to other disasters. And this is certainly not an exemption from agency rules, as some observers have incorrectly characterized it. It is a judicious use of the agency’s existing authority. Importantly, TCEQ is not offering enforcement forbearance where an entity fails to report its noncompliance. To be clear, TCEQ maintains its oversight of the regulated community.

You may be interested to know that many in the public interest community have advocated for this approach. In a September 2019 [letter](#) to Governor Abbott, the consumer advocacy group, Public Citizen, wrote: “We believe that exercise of enforcement discretion [*sic*], not environmental rule suspensions, is the appropriate action to provide companies with the flexibility they need to respond to disasters.”

In addition to case-by-case enforcement discretion, the Executive Director has extended the deadlines for certain routine reporting requirements and, pursuant to agency [rules](#), implemented a variance process for certain public notice requirements. These administrative relief measures are designed to accommodate an appropriate response to the pandemic while achieving the same policy objectives. The reports will be made and public notice will be given, but in a manner that facilitates social distancing.

I fully support the Executive Director’s determination that regulatory flexibility is required, his choice to address violations with case-by-case enforcement discretion, and his decision to grant the administrative relief detailed on the agency’s [website](#). These are reasonable adaptations to the imperative that we slow the spread of this virus and they support the agency’s efforts to maintain continuity in its services and to fulfill our mission to protect public health and the environment.

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Finally, many of the companies that TCEQ regulates are doing much more than simply reacting to the restrictions that the pandemic has imposed. They are working to provide solutions to see us through this crisis. They are keeping the lights on, delivering safe drinking water, powering supply chains that are restocking grocery shelves, and providing materials to interrupt the transmission of this virus.

One observer has suggested that regulated entities with pandemic-related staffing challenges should just stay home. I reflected on that recommendation late last week as I witnessed a convoy travelling northbound through Austin loaded with numerous 275-gallon chemical totes marked UN1170. UN1170 is ethyl alcohol, which most of us now recognize as the main ingredient in hand sanitizer. I am glad those entities are not all staying home but are showing up.

TCEQ is showing up too. We are still watching out for our fenceline communities. We are still holding polluters accountable. We are here to serve all Texans as we see our way through this deadly pandemic. That includes working with members of the regulated community to help them slow the transmission of this virus, comply with environmental regulations, and keep critical services and supply chains flowing.

I appreciate the concerns that have been shared with my office.

Sincerely,



Jon Niermann, Chairman
Texas Commission on Environmental Quality